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2 *E-FILED 9/8/2008*
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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VERIGY US, INC.,

No. C07-04330 RMW (HRL)

Plaintiff,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR PERMISSION TO
DISCLOSE "HIGHLY CONFIDENTIAL
ATTORNEY'S EYES ONLY"
DOCUMENTS TO ITS EXPERTS**

ROMI OMAR MAYDER, WESLEY
MAYDER, SILICON TEST SYSTEMS, INC.,
and SILICON TEST SOLUTIONS, LLC,

Defendants.

[Re: Docket No. 298]

Plaintiff Verigy US, Inc. ("Verigy") moves for leave to disclose "Highly Confidential – Attorney's Eyes Only" ("AEO") documents to its proposed experts: Garry Gillette and Bernell G. West. It also moves for a one-week extension from September 15, 2008 to September 22, 2008 to submit expert reports from either Gillette or West.¹ Pursuant to this court's August 29, 2008 order shortening time, an expedited briefing and hearing schedule was set. Defendants oppose the motion, and plaintiff waives a reply. This court now deems the matter suitable for determination without oral argument. See Civ. L.R. 7-1(b). Accordingly, the September 9, 2008 motion hearing is VACATED. Upon consideration of the moving and responding papers, plaintiff's motion is GRANTED IN PART AND DENIED IN PART as follows:

¹ Verigy says that only one of these experts will testify at trial, but does not specify which will be the testifying expert.

1 Defendants previously stipulated that “Defendants’ only objection to Plaintiff’s
2 disclosure to Verigy’s Proposed Experts is that such disclosure violates section 2.12 of the
3 Stipulated Protective Order because Verigy’s Proposed Experts are past employees of Credence
4 Systems Corporation, a former competitor of Plaintiff Verigy US, Inc. Defendants have no
5 other objections to such disclosure.” (See Morton Decl., Ex. D).

6 Defendants now claim that Credence Systems Corporation (“Credence”) is also a
7 competitor of theirs. They impliedly suggest that unauthorized disclosure of their claimed
8 confidential information is inevitable because the Automated Test Equipment industry is
9 “incestuous.” They also point out that West is a named inventor on a patent issued to Credence
10 in 2005 on technology that reportedly goes to the “heart” of defendants’ business. However,
11 they do not dispute Verigy’s representations that both Gillette and West retired from Credence
12 in 2006 and that neither one has an ongoing relationship with that company. Moreover, both
13 Gillette and West have signed the Acknowledgment and Agreement to be Bound by the
14 Stipulated Protective Order in this case. Defendants have not argued, much less shown, that
15 either West or Gillette are likely to make unauthorized disclosure of defendants’ claimed
16 proprietary information.

17 As such, this court is not persuaded that the risk of harm of disclosure outweighs
18 Verigy’s stated need to disclose AEO documents to its proposed experts. Accordingly,
19 Verigy’s motion for leave to disclose AEO documents is GRANTED. However, as requested
20 by defendants (and inasmuch as Verigy says it is willing to do so), disclosure shall be limited to
21 only one of the proposed experts in question – i.e., either West or Gillette. The decision
22 whether disclosure will be made to Gillette or to West will be for Verigy to decide as it sees fit.

23 As for Verigy’s requested extension to submit expert reports from either West or
24 Gillette, this court finds that other case management deadlines set by the District Court may be
25 adversely affected if the extension were granted. (See Scheduling Order, Docket #274).
26 Moreover, the September 15, 2008 deadline for expert disclosures was set several months ago;
27 and, the current time constraints appear to be due in large to the fact that Verigy evidently
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1 retained Gillette and West only recently. Accordingly, Verigy's request for an extension is
2 DENIED.

3 SO ORDERED.

4 Dated: September 8, 2008

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court

For the Northern District of California

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